

**PLEASE READ THESE TERMS CAREFULLY. BY CONTINUING TO USE THE SITE, OUR APPS, AND OTHER SERVICES, YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS OF USE.**

# **TERMS OF USE**

## **Make Wellness**

These Terms of Use (these “Terms”) govern your use of the Make Wellness web site, located at [www.MakeWellness.com](http://www.MakeWellness.com) (the “Site”), our back office support tools and all of our other products, features, services, technologies, software, websites, and mobile applications (collectively, and together with Site, entail the “Services”, except where we expressly state that separate terms (and not these Terms) apply.

Upper Level Health, LLC, dba, Make Wellness (“Make Wellness”) makes the Services available to you subject to your acceptance of these Terms and this terms of use agreement (this “Agreement”).

**PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE SITE OR SERVICES. BY ACCESSING, DOWNLOADING, LINKING TO, FRAMING, BROWSING, OR USING THE SERVICES, YOU ACCEPT AND AGREE TO BE LEGALLY BOUND BY THESE TERMS, AS WELL AS MAKE WELLNESS PRIVACY NOTICE.**

**IF YOU DO NOT ACCEPT OR AGREE WITH ANY OF THESE TERMS OR THE PRIVACY NOTICE, THEN DO NOT USE THE SERVICES. IF YOU HAVE ALREADY DOWNLOADED ANY MAKE WELLNESS APP, LOGINS FOR THE BACKOFFICE OR ANOTHER MOBILE APPLICATION, YOU SHOULD UNINSTALL THE APP AND DISCONTINUE THE SITE OR ITS USE.**

NOTE, THESE TERMS CONTAIN LIMITATIONS ON MAKE WELLNESS AND ITS THIRD-PARTY PROVIDERS’ LIABILITY (SEE SECTION 15), AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. PLEASE READ THESE PROVISIONS CAREFULLY BEFORE USING THE SERVICES.

IF YOU ARE AN AFFILIATE, THESE TERMS ALSO CONTAIN AN AGREEMENT TO ARBITRATE (SEE SECTION 17). THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST MAKE WELLNESS, ANY OF OUR AFFILIATED ENTITIES, OR ANY OF OUR THIRD-PARTY PROVIDERS TO BINDING AND FINAL ARBITRATION. THE AGREEMENT TO ARBITRATE FURTHER PROVIDES THAT (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST MAKE WELLNESS, OUR AFFILIATED ENTITIES, OR OUR THIRD-PARTY PROVIDERS ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF)

ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST MAKE WELLNESS, OUR AFFILIATED ENTITIES, OR OUR THIRD-PARTY PROVIDERS RESOLVED BY A JURY OR IN A COURT OF LAW. PLEASE READ THIS SECTION CAREFULLY BEFORE USING THE MAKE WELLNESS SERVICES.

When using a particular feature of the Services, you may also be subject to additional rules, guidelines, terms of service, privacy notices, or other contractual provisions as noted.

If you are a Make Affiliate, you agree that your use of the Services is not only subject to these Terms but also to the terms and conditions of your Make Affiliate Agreement and the Make Policies and Procedures (as defined in Section 2.1 below).

## 1. BINDING AGREEMENT

These Terms and this Agreement constitute a binding legal agreement between you, as an individual, or, in the case of some Make Affiliates, in your capacity as an authorized representative of an entity or organization with a Make Affiliate account (in each case, “you” or “your”), and Make (Make may also be referred to as “we,” “us,” or “our”). These Terms describe the terms and conditions under which the Services and all associated features, functionality, recommendations, and content are provided to you. If you permit, authorize, provide access to, or otherwise allow any other individuals to use the Services through your account or device (including but not limited to, in the case of a Make Affiliate, other individuals engaging in Business Activity (as such term is defined in the Make Policies and Procedures) on behalf of your Make Affiliate account), or represent such individuals in any legal capacity, such individuals will be deemed to be included in the terms “you” or “your” as used in these Terms.

Make may amend or replace these Terms at any time, without prior notice to you, except as may be required under applicable laws, rules, or regulations. If you continue to use the Services, you will be bound by any modifications made to these Terms. You should review the then-current version of these Terms from time to time.

## 2. USE OF THE SERVICES; ACCOUNT REGISTRATION

**2.1 Use of the Services.** In consideration for your access to and use of the Services, you represent, warrant, and agree that (a) you are of legal age to form a binding contract; (b) your use of the Services will be solely for your personal and lawful use; (c) you will comply with these Terms and all applicable laws in using the Services; and (d) where such sharing is not otherwise prohibited by the local laws, rules, or regulations of your country, you will comply with the [Make Social Sharing Guidelines](#) and the [Make Product Testimonial Guidelines](#) whenever sharing testimonials, before-and-after photos, or other materials through the Services with respect to any Make products.

If you are a Make Affiliate, you further represent, warrant, and agree that you will comply with the Make Affiliate Agreement, the Make Policies and Procedures, any and all other applicable Make guidelines (collectively, the “Make Policies and Procedures”) in using the Services. If you are using the Services on behalf of an entity or organization that is a Make Affiliate, you represent and warrant that you have the authority to bind such entity or organization to these Terms, in which case these Terms will be between such entity or organization and Make, and that you have the authority to make all of the representations and warranties contained in these Terms on such entity’s or organization’s behalf, including those set forth in this Section 2.1.

**2.2 Account Registration; Account Information.** By registering for a Make account (which may be either a Make Affiliate account, a Make Customer account), and in consideration for your access to and use of the additional services, features, and functionality that are available to you with such an account, you further represent, warrant, and agree that all information provided by you is accurate and complete, and that you shall maintain and update such information to keep it accurate and complete.

You understand and agree that your password may be used to attribute an electronic record and an electronic signature to you, and that you are solely responsible for keeping your login, password, and any codes related to your use of your Make account confidential. You agree to immediately notify Make of any unauthorized use of your password or any other breach of security. You will be solely liable for any claims, damages, losses, costs, or other liabilities resulting from any failure to keep your login, password, or any codes related to your use of your Make account confidential (whether such failure or any disclosure occurs with or without your knowledge or consent). Without limiting the foregoing, you understand and agree that Make shall not, in any manner, be responsible or liable for fraudulent purchases that are made using your compromised password.

**2.3 Personal Information.** When you use the Services or register for or use a Make account, Make will collect and process certain personal information about you (“Personal Data”). This may include, but is not limited to, your name, email address, phone number, billing and shipping address, payment information, profile picture, location, usage history and information, purchase history, product interests, images, and any responses you provide to questionnaires. This information will be collected, used, and disclosed in accordance with the Make Privacy Notice, which is available for your review on the Site, as well as via the link provided at the end of this Section 2.3. The Make Privacy Notice is incorporated into these Terms by reference. By using the Services, you agree to the collection and use of your Personal Data in accordance with the Make Privacy Notice.

### **3. DISCLAIMERS**

**3.1 Other Users.** Neither Make nor its third-party providers have control over the conduct of other users

of the Services (collectively, “Users”), or over the truth or accuracy of the information that other Users share through the Services. Neither Make nor its third-party providers can guarantee the true identity of any individual with whom you engage through the Services. Neither Make nor its third-party providers endorse any person who uses or registers for the Services. NEITHER MAKE NOR ITS THIRD-PARTY PROVIDERS SHALL BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, CAUSED BY ANOTHER USER OF THE SERVICES.

**3.2 User Disputes.** You agree that you are solely responsible for your interactions with any other User in connection with the Services. Neither Make nor its third-party providers shall have any liability or responsibility with respect to such interactions. Make reserves the right, but has no obligation, to become involved in any way with disputes between you and any other User of the Services.

**3.3 Make Affiliates.** Make Affiliates are independent third-party contractors of Make, and Make is not responsible or liable for the statements, acts, or omissions of such Make Affiliates, whether in connection with the Services or in any other context. You acknowledge and agree that Make has no control over, and is not responsible or liable for any information, in any medium, provided to you by a Make Affiliate. Make does not confirm the accuracy or reliability of any materials created or distributed by Make Affiliates in any medium.

## **4. AGE RESTRICTIONS**

You must be at least 18 years old or the age of majority in your location, whichever is greater, to use the Services.

## **5. NO FDA APPROVED CLAIMS**

Any product recommendations or any similar Services as a Make Affiliate are made for health, nutritional and educational, and convenience purposes only and are in no event meant to provide or replace the advice of your physician or other health care provider in the event there are any questions concerning any condition or disease of any consumer or Customer of Make. The statements made through use of the Site and Services have not been evaluated by the U.S. Food and Drug Administration (the “FDA”), and none of the Make products or the Services are intended to investigate, diagnose, monitor, alleviate, treat, cure, or prevent

any disease. Anyone with a nutritional concern, or other health concern, including but not limited to questions concerning the use of our Products in conjunction with any medical treatment, prescription drug or other services of a medical professional, should only be used after consulting with a medical professional for diagnosis and treatment. Please consult your physician, pharmacist, or health care provider before using dietary supplements/food supplements, especially if you have preexisting medical conditions or are taking medications.

## **6. PRODUCT RECOMMENDATIONS**

The Services or Site may provide you with certain product recommendations using proprietary algorithms (which may include artificial intelligence and machine learning). These product recommendations may be based on information you provide to Make through the Services, as well as on general population surveys, cohorts of users and references to demographics that may share similar attributes.

## **7. TESTIMONIALS, BEFORE-AND-AFTER PHOTOS, AND RELATED MATERIALS**

You understand and agree that, in the event Make determines, in its sole discretion, that you have violated the Policies and Procedures, these Terms of Use, or any Make guidelines, or any applicable laws, rules, or regulations when sharing testimonials, before-and-after photos, or other materials through the Services with respect to any Make products, you will cooperate fully with Make to remove such posts from all forums where they have been shared. Your cooperation under this Section 7 shall be in addition to any other rights or remedies that Make may have under these Terms.

## **8. YOUR LICENSE TO USE THE SERVICES**

**8.1 License.** Subject to your ongoing compliance with these Terms, you are hereby granted a revocable, non-exclusive, limited, non-transferable, non-sublicensable personal license to use the Site, or other Make mobile applications on a device that you own or control and to access and use the Services (the "License"). Any rights not expressly granted by this Agreement, these Terms, or any applicable end-user license agreement are reserved by Make. Pursuant to these Terms, the Services are being licensed to you, not sold. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT ANY UPLOADS OR TRANSMISSIONS YOU MAKE MAY BE INTERCEPTED AND USED BY AN UNAUTHORIZED THIRD PARTY AND THAT ALL OF THE RISK ASSOCIATED THEREWITH IS SOLELY YOURS. Make reserves the right to add to, change, limit, or discontinue any aspect, content, functionality, or feature of the Services at any time. Any such additions, changes, limitations, or discontinuations will be subject to these Terms.

**8.2 Reservation of Rights.** The Services, and all content therein or transferred thereby, including without limitation software, images, text, graphics, illustrations, logos, trademarks, service marks, patents, copyrights, photographs, audio, videos, and music (the "Make Content"), and all intellectual property rights related thereto, are the exclusive property of Make, Make's affiliated entities, or Make's third-party service providers, as applicable. The Make Content is protected by U.S. federal and international

copyright and trademark laws and other laws protecting intellectual property or other proprietary rights. All such rights with respect to the Make Content are protected in all forms, media, and technologies existing now or hereinafter developed. No portion of the Make Content may be reprinted, republished, modified, or distributed in any form without the express written permission of Make. Use of the Make Content for any purpose not expressly permitted by these Terms is strictly prohibited. Except as explicitly provided herein, nothing in these Terms gives you a right to use any names, trademarks, logos, or other distinctive brand features of Make, Make's affiliates, Make's third-party service providers, or Site without prior written consent. Nothing contained in these Terms shall be construed as conferring by implication, estoppel, or otherwise any license or right under any patent or trademark of Make or any third party. Except as expressly provided in this Section 8, nothing contained herein shall be construed as conferring any license or rights under any Make or third-party copyright.

**8.3 Linking and Framing the Site.** Unless a User has a written agreement in effect with Make that provides otherwise, a User may only provide a hyperlink to the Site on another website if such User complies with all of the following: (a) the link must be a text-only link clearly marked "Make" or the link must point to the designated Make URL's provided to Affiliates and not to other webpages within the Site; (b) the link, when activated by a user, must display the Site full-screen and not within a frame on the linking website; and (c) the appearance, position, and other aspects of the link must not be such as to damage or dilute the goodwill associated with the Make name and trademarks or create the false appearance that Make is associated with, or a sponsor of, the linking website. By providing this consent, Make is not foregoing its ownership or other rights in the Site or in any trademarks, copyrights, patents, or other forms of intellectual property associated with the Site. Make reserves the right to revoke its consent to any link at any time in its sole discretion.

**8.4 Feedback.** You may choose, or Make may invite you, to submit comments, suggestions, or other feedback about the Services, which may include, but are not limited to, ideas for how to improve the Services ("Feedback"). By submitting Feedback to Make, you agree that your disclosure is entirely voluntarily and without restriction and will not place Make under any fiduciary or other obligation to you. You further agree that Make is free to use and exploit the Feedback in any manner without compensation to you. Feedback, even if designated confidential by you, shall not, absent a separate written agreement between you and Make, create any confidentiality obligation for Make with respect to such Feedback, and Make is free to disclose the Feedback on a non-confidential basis, or on any other basis, to anyone. All Feedback will be the exclusive property of Make. To the extent you own any rights in the Feedback, you agree to assign, and hereby do assign, to Make all right, title, and interest in and to the Feedback. You agree to perform all acts reasonably requested by Make to perfect and enforce such rights.

## 9. YOUR LICENSE TO MAKE

**9.1 User Content.** By accessing, downloading, linking to, framing, browsing, or using the Services,



and without further payment or consideration to you, you grant Make the right to use any data, materials, or other content uploaded or otherwise transmitted to, or created by you through, the Services, including but not limited to images, text, graphics, illustrations, logos, photographs, audio, videos, music, reviews, comments, and other materials (which may include your name, likeness, and social media user names and handles) (collectively, the “User Content”), subject to the following terms and conditions:

(a) You will retain ownership of such User Content, and you grant to Make and its designees (which may include, but are not limited to, other third-party providers, Make Affiliates, and Make customers) a worldwide, royalty-free, non-exclusive license, with right of sublicense (through multiple tiers), to collect, use, reproduce, host, communicate, store, distribute (through multiple tiers), create derivative works of, and publicly display such User Content.

(b) You represent and warrant that you own or otherwise possess all necessary rights with respect to the User Content, that the User Content does not and will not infringe, misappropriate, use or disclose without authorization, or otherwise violate any copyright, trade secret right or other intellectual property or other property right of any third party, that the User Content is not unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene, or otherwise objectionable, and that, if you are Make Affiliate, the User Content complies with the Make Policies and Procedures.

(c) You have obtained the written consent, release, and/or permission of every identifiable individual who appears in the User Content, or if any such identifiable individual is under the age of eighteen (18) or the age of majority in your location, you have obtained the written consent, release, and/or permission from such individual’s parent or guardian, to use such individual’s likeness as part of such User Content in the manner contemplated by these Terms. You agree to provide to Make a copy of any such consents, releases, and/or permissions upon request. If you do submit User Content that contains the likeness of an identifiable individual under the age of eighteen (18) or the age of majority in your location, we strongly encourage you not to include any identifying information (such as the individual’s name or address) with such User Content.

**9.2 Deletion of User Content.** You understand and agree that Make may, in its sole discretion and without prior notice, use, modify, revise, filter, or delete any User Content, including but not limited to permanently deleting such User Content from the Services at any time.

## 10. RESTRICTIONS ON USE

In using the Services, you represent and warrant that you will not:

(a) intentionally or unintentionally violate any of these Terms or any local, state, provincial, national, regional, or international law or regulation;

(b) attempt to decompile, reverse compile, reverse engineer, disassemble, or otherwise to derive source code from any part of the Services, or any other software provided in connection with the Make Services;

(c) make any modification, adaptation, improvement, enhancement, or translation of, or create derivative

works from, the Services, or use, copy, modify, alter, or transfer the Services contrary to these Terms or applicable laws and regulations;

(d) access or use the Services for the purpose of copying any feature of the Services, or for building a competitive product;

(e) license, sell, rent, lease, transfer, assign, redistribute, or otherwise commercially exploit the Services or any aspect thereof;

(f) upload, post, email, transmit, or otherwise make available any material that:

(i) is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful, or racially or ethnically objectionable, encourages criminal behavior, gives rise to civil liability, violates any law, or is otherwise objectionable;

(ii) you do not have a right to make available under any law or under a contractual relationship, or which discloses a trade secret or confidential information in violation of a confidentiality or non-disclosure agreement;

(iii) infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any party (including privacy rights);

(iv) is or contains unsolicited or unauthorized advertising, solicitations for business, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;

(v) contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the Services, or any computer software or hardware, telecommunications equipment, or data of Make or any other User, or that compromises another User's privacy; or

(vi) contains any falsehoods or misrepresentations or creates an impression that you know is incorrect, misleading, or deceptive, or any material that could damage or harm minors in any way;

(g) use the Services to transmit, distribute, post, or submit any information concerning any other person or entity, including without limitation photographs of others without their permission, personal contact information, or credit, debit, or other account numbers;

(h) interfere with another's use of the Services, or with Make's ability to provide the Services;

(i) create liability for Make or cause Make to lose the services of our Internet service providers or other third-party providers;



- (j) “stalk” or harass any other User of the Services, or collect or store any information about any other User, other than for purposes of transacting with one another;
- (k) impersonate any person or entity, or falsify or otherwise misrepresent yourself or your affiliation with any person or entity;
- (l) use automated scripts to collect information or otherwise interact with the Services;
- (m) remove, obscure, or alter any copyright notices, trademarks, or other proprietary rights notices of Make or any other party;
- (n) use the Services on a device without permission, regardless of whether it is a stolen, lost, or unauthorized device, or tamper with or make an unauthorized connection to the network of any wireless service provider;
- (o) use any part of the Services while operating vehicles, heavy machinery or engaging in any activity where insufficient attention on your part could result in personal injury, death, or property damage; or
- (p) advocate, encourage, assist, allow, permit, or enable any third party in doing any of the foregoing.

## **11. DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND DISCRETION. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAKE AND EACH OF ITS THIRD-PARTY PROVIDERS HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICES, OR ANY MERCHANDISE OR SERVICES PROVIDED THROUGH THE SERVICES (UNLESS EXPRESSLY STATED FOR A PARTICULAR PRODUCT OR SERVICE), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT. SOME STATES MAY NOT PERMIT THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU.

MAKE AND EACH OF ITS THIRD-PARTY PROVIDERS MAKES NO WARRANTY (A) AGAINST INTERFERENCE OF YOUR ENJOYMENT OF THE SERVICES; (B) THAT THE SERVICES WILL BE FUNCTIONAL, UNINTERRUPTED, ERROR-FREE OR BUG-FREE, OR MEET YOUR REQUIREMENTS; (C) REGARDING THE SECURITY, RELIABILITY, OR TIMELINESS OF THE SERVICES; OR (D) THAT ANY ERRORS, BUGS, OR FAILURES IN THE SERVICES WILL BE CORRECTED.

ANY CONTENT OR MATERIAL DOWNLOADED, TRANSMITTED, STORED, ACCESSED, OR OTHERWISE

MAINTAINED THROUGH YOUR USE OF THE SERVICES IS DONE SO AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR LOSS OR CORRUPTION OF DATA THAT RESULTS FROM ANY SUCH USE OF THE SERVICES. NO ADVICE, COURSE OF CONDUCT, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MAKE OR ANY PARTY, OR THROUGH THE SERVICES, SHALL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS. YOU ACKNOWLEDGE AND AGREE THAT MAKE MIGHT NOT BE ABLE TO OFFER THE SERVICES AT ALL IN THE ABSENCE OF THE FOREGOING DISCLAIMERS AND LIMITATIONS.

## **12. INDEMNIFICATION**

You agree to indemnify, defend, and hold harmless each of Make, Make's third-party providers, and each of their respective owners, officers, directors, members, managers, affiliates, subsidiaries, employees, agents, representatives, contractors, suppliers, licensors, successors, and assigns from and against any claim, demand, proceeding, loss, damage, liability, cost, or expense (including but not limited to reasonable attorneys' fees and court costs) of any kind arising out of (a) your access to, use, or misuse of the Services or any third-party content and services; (b) any breach by you of your obligations under the Affiliate Agreement or these Terms of Use; (c) any content you create, submit, post, transmit, or otherwise make available through the Services; (d) your violation of the rights of a third party, including but not limited to any infringement of any intellectual property, proprietary right, or trade secret of any person or entity, or of any privacy or consumer protection right that is implicated herein; (e) any violation of law; (f) your negligence or willful misconduct; (g) any dealings between you and any person or entity that you send or otherwise transmit any content to using the Services; (h) your violation of any contract you enter into with another User of the Services; or (i) your misuse of goods or products provided through the Services. This obligation shall survive the termination or expiration of this Agreement, these Terms, and/or your use of the Services. Make reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Make, and you agree to cooperate in such defense. You will not in any event settle any matter without the written consent of Make.

## **13. GOVERNING LAW**

The place of origin of these Terms and this Agreement is the State of Utah, United States of America. These Terms of Use and the Affiliate Agreement will be governed by, construed in accordance with, and interpreted pursuant to the substantive laws of the State of Utah, without giving effect to its rules regarding choice of laws, provided, however, the agreement to arbitrate applicable to Make Affiliates in Section 17 of these Terms shall be governed by the Federal Arbitration Act (USA).

## **14. CHOICE OF FORUM**

**14.1 Make Affiliates.** If you are a Make Affiliate, the exclusive venue for the arbitration hearing and court proceedings related to the arbitration of any and all Disputes (as defined in Section 17 below) will be in Utah County, State of Utah, United States of America, in accordance with Section 17, Arbitration Agreement. If any Dispute or any other claim, dispute, or controversy arising out of or related to this Agreement, these Terms, or the Services is not submitted to arbitration in accordance with Section 17, the exclusive venue for the adjudication of such claims, disputes, and controversies shall be the state and federal courts located in Utah County, State of Utah. You consent to the personal jurisdiction of the state and federal courts located in Utah County, State of Utah, and waive any objection to improper venue. YOU FURTHER WAIVE YOUR RIGHT TO A JURY TRIAL. To the extent either declaratory or injunctive relief is sought, such relief can be awarded only to the extent necessary to provide the relief warranted by a party's individual claim.

**14.2 Make Members, Customers, and Other Users.** You hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state and federal courts located in Utah County, State of Utah, United States of America, and waive any objection to improper venue, for any claims, disputes, or controversies arising out of or relating to this Agreement, these Terms, your use of the Services, or the purchase of products or services through the Services. You agree not to commence any litigation relating thereto except in such courts. You hereby irrevocably and unconditionally agree not to plead or claim in any court in Utah County, State of Utah, that any claim, dispute, or controversy brought therein has been brought in an inconvenient forum. YOU FURTHER WAIVE YOUR RIGHT TO A JURY TRIAL. To the extent either declaratory or injunctive relief is sought, such relief can be awarded only to the extent necessary to provide the relief warranted by a party's individual claim.

## **15. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT UNDER NO CIRCUMSTANCES SHALL MAKE OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DISTRIBUTING THE SERVICES, OR ANY OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES, OR OTHERWISE AFFILIATED ENTITIES, PREDECESSORS, SUCCESSORS, ASSIGNS, PARTNERS, OWNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, INVESTORS, REPRESENTATIVES, AGENTS, OR VENDORS (COLLECTIVELY, THE "MAKE RELATED PARTIES"), BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE, OR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF FUTURE REVENUE OR INCOME; LOSS OF PERSONAL OR BUSINESS REPUTATION OR OPPORTUNITY; LOSS OF PROFITS; LOSS OF GOODWILL; LOSS OF USE; LOSS OF DATA; LOSS OF CONFIDENTIAL INFORMATION; OR BUSINESS INTERRUPTION, CORRUPTION OF DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF ANY OF THE MAKE RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE), ARISING OUT OF OR RELATING TO (A) ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR THESE TERMS; (B) YOUR USE OF OR INABILITY TO USE THE MAKE

SERVICES, (C) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, DATA, INFORMATION, OR SERVICES, (D) ERRORS, MISTAKES, OR INACCURACIES IN ANY INFORMATION AVAILABLE ON THE SERVICES, (E) ANY BUGS, VIRUSES, OR OTHER FILES OR DATA THAT MAY BE HARMFUL TO COMPUTER OR COMMUNICATION EQUIPMENT OR DATA THAT MAY HAVE BEEN TRANSMITTED TO OR THROUGH THE SERVICES, (F) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (G) STATEMENTS OR CONDUCT OF ANY THIRD PARTY WITHIN OR THROUGH THE SERVICES; (H) ANY DEALINGS OR TRANSACTIONS BETWEEN YOU AND ANY PERSONS, ENTITIES, OR USERS WHOM YOU SEND OR TRANSMIT ANY CONTENT TO USING THE SERVICES, INCLUDING WITHOUT LIMITATION ANY PRODUCTS OR SERVICES OFFERED BY YOU TO SUCH PERSONS, ENTITIES, OR USERS; (I) YOUR STATUS AS AN INDEPENDENT CONTRACTOR AND AFFILIATE OF MAKE PRODUCTS; (J) A THIRD-PARTY PROVIDER'S STATUS AS A PROVIDER OF SERVICES TO YOU OR MAKE; (K) ANY ACT, OMISSION, OR OTHER CONDUCT ARISING OUT OF OR RELATED TO THE SERVICES; OR (L) ANY OTHER MATTER RELATING TO THE SERVICES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, YOU FURTHER AGREE THAT IN NO EVENT SHALL THE ENTIRE AGGREGATE LIABILITY OF THE MAKE RELATED PARTIES TO YOU OR YOUR SUCCESSORS OR ASSIGNS FOR ANY CLAIM WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, THESE TERMS, OR YOUR USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR CAUSE OF ACTION ARISING IN CONTRACT, TORT, OR EQUITY, EXCEED THE TOTAL AMOUNT OF ANY FEES PAID BY YOU FOR USE OF THE SERVICES, OR \$50 USD (OR THE CORRESPONDING AMOUNT ONCE CONVERTED INTO YOUR LOCAL CURRENCY), WHICHEVER IS GREATER. AS SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN SUCH JURISDICTIONS LIABILITY IS LIMITED TO THE LEAST AMOUNT PERMITTED BY LAW.

IF YOU ARE A USER FROM THE STATE OF NEW JERSEY, UNITED STATES OF AMERICA, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

## **16. ATTORNEYS' FEES**

If any party commences any action or proceeding, whether an arbitration action or proceeding or a judicial action or proceeding, to interpret or enforce any of the terms or conditions of the Affiliate Agreement or these Terms of Use, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the defense or prosecution of claims in such action or proceeding.

## 17. ARBITRATION AGREEMENT

**MAKE AFFILIATES PLEASE READ THIS ARBITRATION AGREEMENT CAREFULLY. IT AFFECTS YOUR RIGHTS.**

**17.1 What is Mandatory Arbitration.** In order to expedite the resolution of all Disputes (as such term is defined below), Make has instituted a mandatory arbitration procedure between it and its Make Affiliates. Arbitration involves the referral of a Dispute to an impartial third party known as an arbitrator for hearing and decision. The arbitrator acts as a private judge, considers the parties' evidence, and renders a binding decision in the form of an arbitration award. The arbitrator's award is a final ruling, and judgment on the award may be entered by a court of law. The object of arbitration is the final resolution of Disputes in a quicker, more private, and less formal manner than ordinary court proceedings.

**17.2 Arbitration is Mandatory and Binding as to All Disputes.** IF YOU ARE A MAKE AFFILIATE, YOU AND MAKE AGREE THAT MANDATORY AND BINDING ARBITRATION IS THE SOLE MEANS TO DECIDE ANY AND ALL DISPUTES, EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN. BY AGREEING TO ARBITRATION, YOU AND MAKE WAIVE ALL RIGHTS TO ANY JURY OR COURT TRIALS FOR THE RESOLUTION OF DISPUTES AND AGREE THAT THE ARBITRATION AWARD IS FINAL AND THAT A JUDGMENT MAY BE ENTERED BY A COURT ON THE AWARD.

**17.3 Definition of a "Dispute."** A "DISPUTE" MEANS ANY AND ALL PAST, PRESENT, OR FUTURE CLAIMS, DISPUTES, CONTROVERSIES, CAUSES OF ACTION, OR COMPLAINTS, WHETHER BASED IN CONTRACT, TORT, STATUTE, LAW, PRODUCT LIABILITY, EQUITY, OR ANY OTHER CAUSE OF ACTION, (I) ARISING FROM OR RELATED TO THIS AGREEMENT, OR ANY ALLEGED BREACH THEREOF, THESE TERMS, YOUR USE OF OR INABILITY TO USE ALL OR PART OF THE SERVICES, OR THE USE OF OR THE INABILITY TO USE ALL OR PART OF THE SERVICES BY ANY OF YOUR CUSTOMERS, AFFILIATES IN YOUR DOWNLINE OR UPLINE, OR THE CUSTOMERS OF AFFILIATES IN YOUR DOWNLINE OR UPLINE, INCLUDING WITHOUT LIMITATION ANY AND ALL SUCH CLAIMS, DISPUTES, CONTROVERSIES, CAUSES OF ACTION, OR COMPLAINTS BETWEEN YOU AND ANY OF THE MAKE PARTIES (AS SUCH TERM IS DEFINED BELOW), BETWEEN YOU AND ANY THIRD-PARTY PROVIDER OF ALL OR ANY PORTION OF THE SERVICES (EACH, A "THIRD-PARTY PROVIDER") (EACH SUCH THIRD-PARTY PROVIDER SHALL BE A THIRD-PARTY BENEFICIARY OF THIS SECTION 17, ARBITRATION AGREEMENT), BETWEEN YOU, ANY OF THE MAKE PARTIES, AND ANY OF MAKE'S THIRD-PARTY PROVIDERS, BETWEEN YOU AND ANOTHER MAKE AFFILIATE (WHO SHALL BE A THIRD-PARTY BENEFICIARY OF THIS SECTION 17, ARBITRATION AGREEMENT), BETWEEN YOU, ANY OF THE MAKE PARTIES, AND ANOTHER MAKE AFFILIATE, OR BETWEEN YOU, ANY OF THE MAKE PARTIES, ANOTHER MAKE AFFILIATE, AND ANY OF MAKE'S THIRD-PARTY PROVIDERS, OR (II) ARISING OUT OF OR RELATED TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT OR THESE TERMS. The "Make Parties"

shall mean Make, Upper Level Health, LLC, and their respective parents, subsidiaries, and otherwise affiliated entities. Each of Make Parties, and their respective parents, subsidiaries, and otherwise affiliated entities, as well as the parents, subsidiaries, and otherwise affiliated entities of Make, shall be a third-party beneficiary of this Section 17, Arbitration Agreement. Nothing in this definition of "Dispute" is intended to, nor shall it be interpreted to, permit adjudication of any Dispute as a class action.

**17.4 Mediation.** Mediation is a voluntary process whereby a neutral third party known as a mediator attempts to resolve a Dispute between contending parties. The object of the mediator is to increase the parties' mutual understanding of the Dispute, persuade them to adjust their positions towards each other, and hopefully resolve the Dispute through agreement by the parties. If all parties to the Dispute agree to mediation, then Make will facilitate a mediation to be held in Utah County, State of Utah, at the offices of Make's outside counsel. The mediation will be conducted in the English language. All fees and costs of the mediation will be borne equally by the parties to the mediation. If not all parties to the Dispute agree to the mediation, or any agreed-to mediation is not successful, then the Dispute will be submitted to arbitration as provided in this Section 17.

**17.5 Arbitrating Parties.** All parties that will participate in the arbitration, including you (a Make Affiliate), the Make Parties, another Make Affiliate, or Make's Third-Party Providers, are referred to as "Arbitrating Parties" in this Section 17.

**17.6 Arbitration Procedure.**

**17.6.1 AAA Arbitration, Arbitration Seat, and Arbitration Location.** All Disputes not resolved by mediation shall be settled by binding arbitration administered by the American Arbitration Association ("AAA"), or its designated successor, in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered by any state or federal court located in Utah County, State of Utah, having jurisdiction. Utah County, State of Utah, shall be the place and seat of the arbitration, and the state and federal courts located in Utah County, State of Utah, shall have exclusive venue of any matters relating to the arbitration, including without limitation deciding petitions and motions to compel arbitration and confirming, modifying, or vacating the arbitration award. You and Make consent to the personal jurisdiction of any state or federal court located in Utah County, State of Utah, to adjudicate such matters relating to the arbitration and waive any objection to improper venue. The proceedings will be held before a single arbitrator, who will render a final and binding decision. The arbitration hearing will be held in the Utah, Utah, offices of Make's outside counsel.

**17.6.2 Agreed Modifications to the AAA Commercial Arbitration Rules ("CAR").** Section 17.6.1 and the following subsections of this Section 17.6.2 shall govern the arbitration proceedings notwithstanding anything in the CAR to the contrary.

**17.6.2.1 Procedural Rules.** Unless the Arbitrating Parties otherwise agree after the Dispute arises, neither the "Expedited Procedures" of the CAR nor the "Procedures for Large, Complex Commercial Disputes" of the CAR shall apply to the arbitration.



**17.6.2.2 When an Arbitration Claim May Be Made.** A claim made in a demand for arbitration or a counterclaim or crossclaim asserted in arbitration (collectively, an “Arbitration Claim”) shall in no event be made after the date when the institution of legal or equitable proceedings based on the Arbitration Claim would be barred by the applicable statute of limitations, statute of repose, or contractual limitation on the assertion of claims. For purposes of applicable statutes of limitation, statutes of response, and contractual limitations on the assertion of claims, receipt by the AAA of an Arbitration Claim shall constitute the institution of legal or equitable proceedings based on the Arbitration Claim.

**17.6.2.3 Selection of Single Arbitrator.** The arbitration proceedings will be held before a single arbitrator. Before the procedures of the CAR for the selection of an arbitrator are commenced by the AAA, the Arbitrating Parties shall have not less than fifteen (15) calendar days after filing of the initial demand for arbitration, the initial counterclaim (if any), and initial crossclaim (if any) to mutually agree upon the appointment of the arbitrator.

**17.6.2.4 Qualifications of Arbitrator.** Unless the Arbitrating Parties mutually agree to the appointment of the arbitrator pursuant to Section 17.6.2.3, the arbitrator selected in accordance with the procedures of the CAR shall (a) be a professional arbitrator having not less than ten (10) years’ experience in conducting AAA arbitrations; (b) be law trained and have practiced law as a licensed lawyer and/or have served as a judge for not less than ten (10) years; (c) have at least five (5) years’ experience in software licensing agreements and terms of use; and (d) have some experience with multilevel marketing companies having a direct sales independent contractor distributor network.

**17.6.2.5 Consolidation of Arbitrations.** The Arbitrating Parties agree that a court with jurisdiction may on the petition of Make (but not any other Arbitrating Party) (a) consolidate separate arbitration proceedings to which any of the Make Parties is a party as to all or some claims if there are separate agreements to arbitrate or separate arbitration proceedings between the same parties, and (b) consolidate separate arbitration proceedings as to all or some claims if any of the Make Parties is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third party when (1) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions or the Make business, (2) the existence of a common issue of fact or law creates a possibility of conflicting decisions in the separate arbitration proceedings, and (3) the prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of, or hardship to, parties opposing consolidation. The Arbitrating Parties agree that there shall be no other consolidations of separate arbitration proceedings.

**17.6.2.6 Discovery.** The arbitrator will have the discretion to order a pre-arbitration exchange of information by the Arbitrating Parties, including but not limited to the production of documents supporting an Arbitrating Party’s claims or defenses, the production of requested documents, the



identification of proposed witnesses and summaries of their expected testimony, the production of reports of expert witnesses expected to testify at the arbitration hearing, and the depositions of witnesses and Arbitrating Parties. Additionally, subject to the arbitrator's discretion, the Arbitrating Parties may submit a pre-arbitration brief outlining the legal causes of action, factual background, and argument of positions.

**17.6.2.7 Presentation of Evidence.** The arbitrator shall allow the presentation of evidence at the arbitration hearing by Affidavit and/or Declaration of a witness, despite the absence of the opportunity by the opposing parties to cross-examine the witness, but the arbitrator may reduce the weight that the arbitrator gives to such evidence. The arbitrator shall allow the presentation of testimony of witnesses at the arbitration hearing by deposition or by video deposition that was taken under circumstances that allowed for cross-examination of the witness even if the witness is available to attend the arbitration hearing and subject to the subpoena power of the arbitrator. The arbitrator shall allow the presentation of testimony of witnesses at the arbitration hearing via live video platforms, and such witnesses shall be subject to cross-examination via the same live video platform.

**17.6.2.8 Dispositive Motions.** The arbitrator shall grant motions dispositive of some or all claims of an Arbitrating Party only when there is no dispute as to any facts material to the disposition and the disposition can be made as a matter of law.

**17.6.2.9 Date of Arbitration.** Unless all Arbitrating Parties agree otherwise, or a court with jurisdiction orders otherwise on the petition of one of the Arbitrating Parties for good cause, the arbitration will take place within six (6) months after the Arbitration Claim is filed.

**17.6.2.10 Date of the Award.** On the petition of an Arbitrating Party for good cause, a court with jurisdiction may extend the time for the arbitrator to issue an award following the close of the arbitration hearing, and such order may be issued before or after the expiration of the time for the issuance of the award.

**17.6.2.11 Reasoned Award.** The arbitrator shall issue a reasoned award.

**17.6.2.12 Language.** The arbitration will be conducted in the English language, but at the request and expense of the requesting Arbitrating Party, documents and testimonies will be translated into the requesting Arbitrating Party's language.

**17.6.2.13 No Class Actions.** No Dispute will be adjudicated, in arbitration or any other judicial proceeding, as a class action.

**17.6.2.14 Permitted Attendees.** Each Arbitrating Party in the arbitration is limited to the attendance of the Arbitrating Party and, with respect to you and your Affiliate account, those individuals appearing on your Affiliate account with Make. In addition, each Arbitrating Party is limited to no more than three attorneys.

**17.6.2.15 Fees and Expenses of Arbitrator.** All fees and expenses of the arbitrator will be borne equally by the Arbitrating Parties in the arbitration, subject to allocation in the final award.

### **17.6.3 Arbitration Awards.**

(a) The arbitrator's award will be final and binding. It will be a full resolution of all existing claims and disputes between the Arbitrating Parties in the arbitration. Judgment upon any arbitration award may be entered by any state or federal court with jurisdiction located within Salt Lake County, the State of Utah. The binding and preclusive effect of any arbitration award will be limited to the actual Dispute and Arbitration Claim arbitrated, and to the Arbitrating Parties, and will have no collateral effect on any other disputes or claims of any kind.

(b) The arbitrator's decision will be in writing and based on the application of the strict rules of law to the evidence submitted in the arbitration. In addition to an award for monetary damages incurred, the arbitrator may also award a prevailing Arbitrating Party the costs and expenses of the proceeding, including but not limited to arbitration fees and reasonable attorney's fees. However, punitive damage awards are not allowed. NEITHER AN ARBITRATING PARTY, NOR MAKE, NOR A MAKE THIRD-PARTY PROVIDER, NOR ANY OF MAKE'S OR MAKE'S THIRD-PARTY PROVIDERS' PARENT, SUBSIDIARY, RELATED OR AFFILIATED ENTITIES, OFFICERS, DIRECTORS, EMPLOYEES, INVESTORS, OR VENDORS, WILL HAVE ANY LIABILITY FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY ARISING OUT OF OR RELATING TO ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT OR THESE TERMS, OR FOR ANY ACT, OMISSION, OR OTHER CONDUCT ARISING OUT OF OR RELATED TO THE SERVICES, AN ARBITRATING PARTY'S STATUS AS AN INDEPENDENT CONTRACTOR AND AFFILIATE OF MAKE'S PRODUCTS, OR A THIRD-PARTY PROVIDER'S STATUS AS A THIRD-PARTY PROVIDER OF SERVICES TO YOU OR TO MAKE.

(c) This Agreement contains a limitation of liability in Section 15. The arbitrator shall have no authority to award damages against the Make Related Parties (defined in Section 15) such that the entire aggregate liability of the Make Related Parties exceeds the agreed limitation on liability of the Make Related Parties set forth in Section 15 of this Agreement.

**17.6.4 Confidentiality.** All arbitration proceedings will be private and closed to the public, and the documents, pleadings, and testimony produced in the proceedings shall be kept confidential. Except as may be required by law, and the use of the arbitration award to procure or to oppose the entry of a judgment on the arbitration award by a court of law or to appeal or enforce a judgment entered on the arbitration award, neither an Arbitrating Party nor the arbitrator may disclose the existence, content, or results of any arbitration proceeding without the prior written consent of all the Arbitrating Parties.

**17.6.5 Enforcement of Judgment Entered on Arbitration Award; Injunctive Relief.** Notwithstanding this arbitration agreement, any Arbitrating Party may apply to a court of competent jurisdiction in the State of

Utah, or in any other jurisdiction as necessary to enforce a judgment entered on an arbitration award or injunctive relief granted by an arbitrator or a court of competent jurisdiction regarding an arbitration under this arbitration agreement. Notwithstanding this arbitration agreement, any Arbitrating Party may apply to a federal or state court with competent jurisdiction located in Utah County, State of Utah, (i) to seek a temporary restraining order, preliminary injunction, other injunctive relief, or an order compelling arbitration; or, (ii) in an action brought by Make or its Third-Party Providers, to enforce their respective trademarks, patents, copyrights, or other intellectual property. The institution of any action in a court for equitable relief, to enforce an arbitration award or order or to enforce a judgment entered on an arbitration award or order, will not constitute a waiver of the obligation of any Arbitrating Party to submit any Dispute to arbitration.

**17.6.6 Survival.** This agreement to arbitrate will survive any termination or expiration of this Agreement, these Terms, or your Make Affiliate account.

## **18. MODIFICATION, SUSPENSION, OR TERMINATION OF YOUR ACCESS**

**18.1 Modification, Suspension, or Termination by Make.** Your access to your Make account and/or to the Services may be modified, restricted, or suspended, in whole or in part, at any time, for any or no reason, without prior notice to you, except as may be required under applicable laws, rules, or regulations or your Affiliate Agreement and the Make Policies and Procedures. Further, your Make account or your access to the Services may be terminated at any time, for any or no reason, without prior notice to you, except as may be required under applicable laws, rules, or regulations or your Affiliate Agreement and the Make Policies and Procedures. Any such modification, restriction, suspension, or termination shall be made by Make in its sole discretion, and neither Make nor its third-party providers shall be responsible to you or any third party for any damages that may result from such modification, restriction, suspension, or termination of your Make account and/or your access to the Services. Reasons for termination may include, but are not limited to: (a) violations of these Terms of Use and any other policies or guidelines that are referenced in these Terms of Use and/or posted within the Services; (b) discontinuance or material modification to the Services or any part thereof; (c) a request and/or order from law enforcement, a judicial body, or other government agency; (d) cases where the provision of the Services to you is or may become unlawful; (e) unexpected technical or security issues or problems; (f) your participation in fraudulent or illegal activities; or (g) if you are a Make Affiliate, violations of your Affiliate Agreement or the Make Policies and Procedures.

**18.2 Termination of Your Make Account by You.** You may terminate your Make account at any time by contacting Make Customer Service at 1-800-xxx-xxxx.

**18.3 User Content Upon Termination of Your Make Account.** Upon termination of your Make account for any reason, all User Content associated with your Make account shall be deleted. You may continue to use certain features of the Services without maintaining a Make account, subject to your ongoing compliance with these Terms and this Agreement. You may contact us at [support@makewellness.com](mailto:support@makewellness.com)

any questions related to exercising your rights under the Privacy Notice with respect to any personal information provided by you within the Services.

## 19. SECURITY OF THE SERVICES

The Services are intended for your personal use only. You understand and acknowledge that the Services may not function properly, may contain errors or bugs, and are susceptible to breach, corruption, or failure. If any of the Services malfunction or fail, or if Site or any other Make mobile applications are disabled or uninstalled from your device, with or without your knowledge and/or consent, some or all of the Services may not function. You are solely responsible for any resulting claims, liability, losses, or damages arising out of the unauthorized disclosure, transfer, or use of any personal content, data, or materials stored on your device for any reason, even if occurring as a result of a failure in the Services or from disabling or uninstalling Site or any other Make mobile applications, with or without your knowledge and/or consent.

## 20. PRODUCT PURCHASES AND REFUNDS

**20.1 Applicable Market Purchases.** You may have the opportunity to order certain products and services through the Services. You are subject to the terms and conditions governing such product orders in the market where you make the purchase, and it is your responsibility to be aware of their details. If you are a Make Affiliate, your purchase will be subject to your separate Affiliate Agreement and other related agreements with Make.

**20.2 Returns.** If you desire to return a Make product that you have purchased through the Services, please consult the return policies applicable to your market, which may be found on your local Make website.

**20.3 Product Purchases and Pricing.** All billing and other information submitted by you must be truthful and accurate. Providing any untruthful or inaccurate information is a breach of these Terms of Use and this Agreement. By completing the checkout process, you agree to accept and to pay for the product(s) requested. You represent and warrant that you have the legal right to use any credit card or other payment means used to complete any transaction.

**20.4 Incorrect Pricing.** In the event a product is listed at an incorrect price or with incorrect information due to a typographical error or error in pricing or product information, Make shall have the right to refuse or cancel any orders placed for products listed at the incorrect price, except where prohibited by applicable laws or regulations. Make shall have the right to refuse or cancel any such orders, whether or not the order has been confirmed and a credit card charged. Further, Make reserves the right, in its sole discretion, to refuse or cancel any order for any reason. If your credit card has already been charged for the purchase and your order is canceled, Make shall immediately issue a credit to your credit card account in the amount of the charge.

**20.5 Product Descriptions.** We attempt to be accurate in all product descriptions. Nevertheless, we do not warrant that any product description or other content related to the products is accurate, complete, reliable, current, or error free. If you find a product is not as described, your sole remedy is to return the product pursuant to Make's Refund Policy, which may be found on your local Make website.

**20.6 Purchase Limitations.** We reserve the right, with or without prior notice, to (a) impose conditions on the honoring of any coupon, coupon code, promotional code, or other promotion, (b) change a product description, (c) limit the availability of any product or service, (d) terminate our provision of any product or service, or (e) refuse to provide you or any customer with any product or service. The price and availability of any Make product or service may be changed at any time without notice.

**20.7 Promotions.** The Services may contain contests or promotions that require you to send material or information about yourself or your Make business in order to participate. Please note that any such contest or promotion offered through the Services may be governed by a separate set of terms and conditions, which may include, among other things, eligibility requirements such as age limits and geographical restrictions. If you decide to participate in such contests or promotions, it will be your responsibility to familiarize yourself with any relevant terms and conditions, and by your participation you agree to comply with any such terms and conditions which will be binding and final in all respects. Any promotion will be void in jurisdictions where it is prohibited.

## **21. ASSIGNMENT**

You may not assign your rights or delegate your responsibilities hereunder without the express written permission of Make, except pursuant to the sale of your business, or all or substantially all of its assets. Make may, at any time, assign its rights or delegate its obligations hereunder without notice to you.

## **22. PREVAILING LANGUAGE**

The English language version of these Terms shall be controlling in all respects and shall prevail in case of any inconsistencies between these Terms and any translated version of these Terms. Any translation of these Terms in any other language is provided as a courtesy only.

## **23. THIRD PARTY BENEFICIARY RIGHTS**

Except as expressly stated herein, no person who is not a party to these Terms or to this Agreement is intended to be a beneficiary of these Terms or this Agreement, and no person who is not a party to these Terms or this Agreement shall have any right to enforce any provision of these Terms of Use or this Agreement.

## **24. THIRD PARTY SITES AND SERVICES**

The Services may direct you to sites, software, or services owned or operated by third parties ("Third-

Party Sites”). Make has not reviewed all of the Third-Party Sites to which you may be directed, and Make has no control over such Third-Party Sites. Additionally, Make has no control over and is not responsible for (a) the content and operation of such Third-Party Sites or (b) the privacy or other practices of such Third-Party Sites. The fact that the Services direct you to such Third-Party Sites does not indicate any approval or endorsement of any such Third-Party Sites. The Services direct you to such Third-Party Sites only as a convenience. You are responsible for the costs associated with such Third-Party Sites, including any applicable license fees and service charges. Accordingly, Make strongly encourages you to become familiar with the terms of use and practices of any such Third-Party Sites. Third-Party Sites may provide links to other sites and apps with or without Make’s authorization. Make does not endorse such sites, and Make is not and will not be responsible or liable for any links to those sites or apps, any content, advertising, products, or other materials available on or through such other sites or apps, or any loss or damages incurred in connection therewith. YOU AGREE THAT YOUR USE OF THIRD-PARTY SITES, SOFTWARE, AND SERVICES, INCLUDING BUT NOT LIMITED TO YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH THIRD-PARTY SITES, SOFTWARE, AND SERVICES IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES, SOFTWARE, AND SERVICES. YOU HEREBY RELEASE MAKE, AND MAKE’S THIRD-PARTY PROVIDERS, FROM ALL LIABILITY AND/OR DAMAGES THAT MAY ARISE FROM YOUR USE OF ANY THIRD-PARTY SITES OR YOUR RECEIPT OF SERVICES FROM ANY THIRD-PARTY SITES. Make has the right, and any time and in its sole discretion, to block links to Third-Party Sites and apps through technological or other means without prior notice.

## **25. SYSTEM OUTAGES**

Make and its third-party providers periodically schedule system downtime for the Services for maintenance and other purposes. Unplanned system outages may also occur. Neither Make nor its third-party providers shall have any liability whatsoever for the resulting unavailability of the Services, for any loss of data or transactions caused by planned or unplanned system outages or the resultant delay, misdelivery, or nondelivery of information caused by such system outages, or for any third-party acts or any other outages of web host providers or the Internet infrastructure and network external to the Services.

## **26. EXPORT RESTRICTIONS**

You may not use or otherwise export or re-export the Services except as authorized by United States law and the laws of the jurisdiction in which the Services were obtained. You agree (a) to comply with the requirements of the U.S. Department of Commerce Export Administration Regulations, the U.S. International Traffic in Arms Regulations, applicable U.S. sanctions and embargoes administered by the U.S. Department of Treasury, and all applicable international, national, state, and local laws and regulations, including but not limited to any applicable import and use restrictions, to the extent that any apply to you.



## **27. SERVICE PROVIDER PAYMENT**

You agree to pay all fees charged to you by your wireless service provider, if any, for the Services and any associated data usage charges, if any, regardless of whether you have electronically downloaded, installed, or used any of the Services. We will not be liable for any liabilities, losses, or damages resulting from any failure in the functionality of the Services caused by or resulting from your failure to pay any amounts when due.

## **28. NOTICES**

By using the Services, you consent to receive all agreements, communications, notices, and disclosures in connection with the Services in electronic form, including short message service (“SMS”).

## **29. DISTRIBUTION CHANNELS**

Site and other Make mobile applications may be made available through the Apple App Store, Google Play, or other distribution channels (each, a “Distribution Channel”). If you obtain Site or another Make app or tool through a Distribution Channel, you may be subject to additional terms of the Distribution Channel. These Terms are between you and Make only, and not with the Distribution Channel.

Where Site or another Make app is made available for your use in connection with an Apple-branded product (“Apple-Enabled Software”), in addition to the other terms and conditions set forth in these Terms, the following terms and conditions apply:

- You and Make each acknowledge that these Terms are concluded between you and Make only, and not with Apple Inc. (“Apple”), and that as between Make and Apple, Make and its third-party providers, not Apple, are solely responsible for the Apple-Enabled Software and the content thereof.
- You may not use the Apple-Enabled Software in any manner that is in violation of or inconsistent with the Usage Rules set forth for Apple-Enabled Software in, or otherwise be in conflict with, the App Store Terms of Service.
- Your license to use the Apple-Enabled Software is limited to a non-transferable license to use the Apple-Enabled Software on an iOS product that you own or control, as permitted by the Usage Rules set forth in the App Store Terms of Service.
- Apple has no obligation whatsoever to provide any maintenance or support services with respect to the Apple-Enabled Software.
- Apple is not responsible for any product warranties, whether express or implied by law. In the event of any failure of the Apple-Enabled Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Enabled Software to you, if any; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever



with respect to the Apple-Enabled Software, or any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty, which will be the sole responsibility of Make and its third-party providers, as applicable, to the extent it cannot be disclaimed under applicable law.

- You and Make each acknowledge that Make and its third-party providers, as applicable, not Apple, are responsible for addressing any claims of you or any third party relating to the Apple-Enabled Software or your possession and/or use of that Apple-Enabled Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Enabled Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- In the event of any third-party claim that the Apple-Enabled Software or the end-user's possession and use of that Apple-Enabled Software infringes that third party's intellectual property rights, as between Make and Apple, Make and its third-party providers, as applicable, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim.
- You represent and warrant that (i) you are not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. government list of prohibited or restricted parties.

You and Make each acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of these Terms with respect to the Apple-Enabled Software, and that, upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you with respect to the Apple-Enabled Software as a third-party beneficiary thereof.

## **30. COPYRIGHT**

Make's policy regarding copyright infringement and Make's designated agent for receipt of copyright infringement claims pursuant to the Digital Millennium Copyright Act (17 USC § 512) is set forth below:

### **MAKE COPYRIGHT NOTICE**

Make respects the intellectual property rights of others and requires those who use the Services to do the same. Make may, in appropriate circumstances and in its discretion, remove or disable access to material that infringes upon the intellectual property rights of others. Make may also, in its discretion, remove or disable links or references to an online location that contains infringing material or infringing activity. If you believe that your work has been used through the Services in any manner that constitutes copyright infringement, please notify Make's copyright agent by written notice. The notice should include the following

information:

- an electronic or physical signature of a person authorized to act on behalf of the owner of the copyright allegedly infringed;
- a description of the copyrighted work you claim has been infringed, including a copy of the copyrighted work or the web page address where the copyrighted work may be found;
- identification of the location in the Services of the material you claim has been infringed, or the link or reference to another website that contains the material you claim has been infringed;
- your name, address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use of the material at issue is not authorized by the copyright owner, the agent of the copyright owner, or the law; and
- a statement by you, under penalty of perjury, that the information in this notification is accurate and that you are the copyright owner of the material allegedly infringed or authorized to act on the copyright owner's behalf.

Make's copyright agent for notice of claims of copyright infringement through the Services can be reached as follows:

**By mail:**

Make Wellness  
Attn: Legal Department  
Lehi, Utah

**By email:**

[support@makewellness.com](mailto:support@makewellness.com)

[makewellness.com](http://makewellness.com)

## **31. ENTIRE AGREEMENT**

This Agreement, these Terms, the Make Privacy Policy, and any other documents expressly incorporated herein by reference constitute the entire agreement between you and Make governing your use of the Services and all related activities. These Terms supplement and do not supersede any other policies that apply to you, including but not limited to your Make Affiliate Agreement and the Make Policies and Procedures.

## **32. NO WAIVER**

Make's delay or failure to exercise or enforce any right or provision under these Terms shall not constitute a waiver of such right or provision.

### **33. HEADINGS**

The headings used throughout this Agreement are solely for the convenience of reference and are not to be used as an aid in the interpretation of this Agreement.

### **34. SEVERABILITY**

If any part of these Terms is held to be unlawful, void, or unenforceable, that part shall be deemed severed and shall not affect the validity and enforceability of the remaining provisions.

### **35. CALIFORNIA CONSUMER NOTICE**

Under California Civil Code Section 1789.3, Users of the Services from the State of California, United States of America, are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

You may contact Make directly at:

Email:

[support@makewellness.com](mailto:support@makewellness.com)

### **36. CONTACT US**

If you have any questions about these Terms of Use or if you wish to receive any additional information, provide feedback, or raise any concerns in relation to the Services, please contact Make at: [support@makewellness.com](mailto:support@makewellness.com)

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